	1 2 3	James Patrick Shea, Esq. Nevada Bar No. 405 Bart K. Larsen, Esq. Nevada Bar No. 8538 Kyle M. Wyant, Esq. Nevada Bar No. 14652											
	4	SHEA LARSEN 1731 Village Center Circle, Suite 150											
	5	Las Vegas, Nevada 89134											
	6	Telephone: (702) 471-7432 Facsimile: (702) 926-9683 Fmail: ishea@shea.law											
	7	Email: jshea@shea.law blarsen@shea.law											
	8	kwyant@shea.law -and- MORRISON & FOERSTER LLP Gary Lee, Esq. (Admitted Pro Hac Vice) New York Bar No. 2397669 Andrew Kissner, Esq. (Admitted Pro Hac Vice) New York Bar No. 5507652 250 West 55th Street											
	9												
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150	12												
N Suite 134	13	New York, New York 10019-3601 Telephone: (212) 468-8000 Facsimile: (212) 468-7900											
RSE firele, ada 89 7432	14												
HEA LARSEN age Center Circle, Suit Vegas, Nevada 89134 (702) 471-7432	15	Email: glee@mofo.com											
SHEA LARSEN Village Center Circle, Suite 150 Las Vegas, Nevada 89134 (702) 471-7432		akissner@mofo.com Attorneys for Enigma Securities Limited											
Si Vill Las	16	UNITED STATES BANKRUPTCY COURT											
173	17												
	18	DISTRICT	OF NEVADA										
	19	In re	Case No. BK-23-10423-mkn										
	20	CASH CLOUD, INC.,	Chapter 11										
	21	dba COIN CLOUD,											
	22	Debtor.											
	23												
	24												
	25												
	26												
	27												
	28												

SHEA LARSEN
1731 Village Center Circle, Suite 150
Las Vegas, Nevada 89134
(702) 471-7432

# SUBMISSION OF ENIGMA SECURITIES LIMITED'S DEMONSTRATIVE EXHIBIT UTILIZED DURING EVIDENTIARY HEARING

Enigma Securities Limited ("<u>Enigma</u>"), by and through its undersigned counsel, hereby provides the Court with its Opening Presentation/Demonstrative Exhibit (attached hereto as <u>Exhibit</u> <u>1</u>) used during the evidentiary hearing held on October 16, 2023. This is being provided to the Court for ease of review in rendering its decision taken under submission.

DATED this 20<sup>th</sup> day of October, 2023.

/s/ James Patrick Shea
James Patrick Shea, Esq.

Nevada Bar No. 405 Bart K. Larsen, Esq. Nevada Bar No. 8538 Kyle M. Wyant, Esq. Nevada Bar No. 14652

**SHEA LARSEN** 

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Las Vegas, Nevada 89134
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-and-

#### **MORRISON & FOERSTER LLP**

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Email: glee@mofo.com

Attorneys for Enigma Securities Limited

akissner@mofo.com

#### **CERTIFICATE OF SERVICE**

1.	LIMITE	ED'S	<b>DEM</b> (	I served ONSTRAT RING in t	TIVE	EXH	IBIT	ENIGN UTILI		CURITIES DURING		
	documen	tates Ba	ankrupto electronio	y Court fo	or the D	oistrict of date here	f Nevad eof and	a, the abserved the	ove-refe nrough th	1-04) of the renced he Notice of		
	□ b. United States mail, postage fully prepaid:											
	□ c. Personal Service:											
	I persona	ally deli	ivered th	e docume	ent(s) to	the pers	ons at tl	nese add	resses:			
			cument(s)		corney's	office v	with a cl	erk or ot	her perso	s made by on in charge e in the		
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	I declare under penalty of perjury that the foregoing is true and correct.											
	Dated: O	ctober	20, 2023	3								
				By:	Bart K.	Larsen						

# **EXHIBIT 1**

### I'IORRISON FOERSTER

# In re Cash Cloud Inc., dba Coin Cloud

\_\_\_\_

Case No.: BK-23-10423-MKN

Chapter 11

Surcharge Motion
Standing Motion
Administrative Expense Application

----

**Enigma's Opening Presentation** 

October 16, 2023

### **How Did We Get Here?**

April 2022

• Enigma provides Debtor short term loan of \$8mm secured by liens on 3,677 machines and cash proceeds

Oct. 2022

 Debtor fails to repay loan at maturity, leading to repeated forbearance by Enigma

Feb. 2023

- Debtor files chapter 11, obtains \$5mm DIP to fund reorganization costs
- Debtor stipulates to validity of Enigma liens, waives right to join challenges

Feb. – Jun. 2023 • Debtor markets company, seeks "going concern" sale / reorg. at mgmt. behest

June 2023

 Debtor selects combined GenesisCoin / Heller bid as winner at price \$10mm+ less than original stalking horse bid

July 2023

- Debtor closes sale of DCM collateral that fails to clear DIP
- Faced with admin. insolvency, Debtor seeks 56% Surcharge, Committee files Standing Motion

# The Surcharge Motion



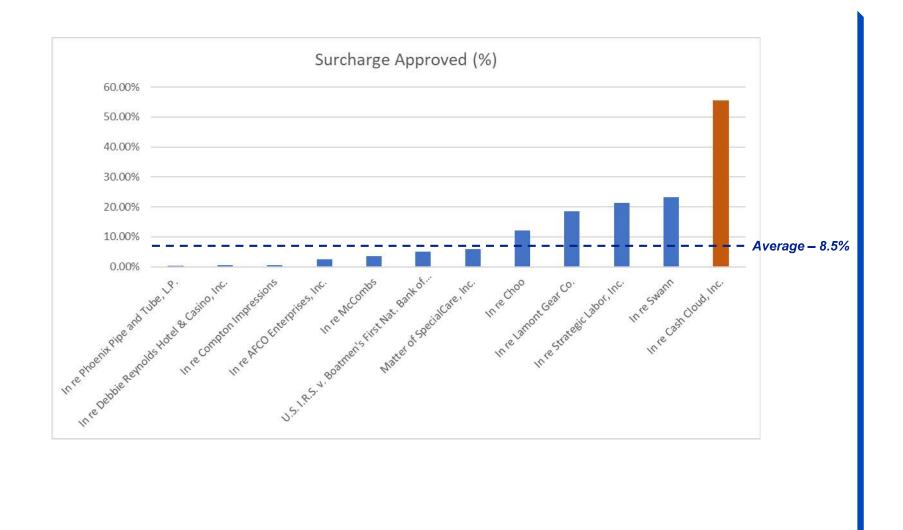
# The Debtor Seeks an Unprecedented Surcharge

Of the cases cited by the Debtor where data was ascertainable from published opinion, the average surcharge sought was 14.6% as a percentage of collateral proceeds or other value, and the average surcharge awarded was 8.51%, compared to the Debtor's request of 55.5%:

Case Name	Proceeds / Value of Collateral		Surcharge Sought (%)		Surcharge Approved (%)
In re Phoenix Pipe and Tube, L.P.	\$1,079,000.00	\$4,631.07	0.43%	\$4,631.07	0.43%
In re Debbie Reynolds Hotel & Casino, Inc.	\$10,650,000.00	\$50,000.00	0.47%	\$50,000.00	0.47%
In re Towne, Inc.	\$5,525,000.00	\$88,212.01	1.60%	-	-
U.S. I.R.S. v. Boatmen's First Nat. Bank of Kansas City	\$918,000.00	\$46,532.60	5.07%	\$46,532.60	5.07%
In re AFCO Enterprises, Inc.	\$4,125,000.00	\$240,736.35	5.84%	\$102,414.35	2.48%
In re Colusa Regional Medical Center	\$2,000,000.00	\$199,259.68	9.96%	-	-
In re Choo	\$185,631.18	\$22,520.69	12.13%	\$22,520.69	12.13%
In re Compton Impressions	\$1,822,636.00	\$254,043.38	13.94%	\$10,000.00	0.55%
In re McCombs	\$398,849.03	\$57,302.65	14.37%	\$14,440.87	3.62%
In re Lamont Gear Co.	\$329,925.00	\$65,174.04	19.75%	\$60,816.69	18.43%
In re Swann	\$16,649.67	\$3,855.87	23.16%	\$3,855.87	23.16%
Matter of SpecialCare, Inc.	\$82,816.89	\$25,615.29	30.93%	\$4,906.89	5.92%
In re Strategic Labor, Inc.	\$300,000.00	\$156,399.86	52.13%	\$64,131.09	21.38%
In re Cash Cloud, Inc.	\$3,780,000.00	\$2,098,214.20	55.51%	??	??

Source: ECF No. 926

# The Debtor Seeks an Unprecedented Surcharge



# MISSING

# **Software Sale to Heller**

■\$1.5 million

### **Brazil & Other Assets**

**\$**650,000





# **DIP Had a \$2.7 Million Professional Fee Budget**

Secured lenders were already primed once to pay for professional fees – deduction from Sale proceeds via Surcharge Motion seeks a "double dip":

	Total		Total	Grand Total
	Post Petition	P	ost-Effective	Full Case
	7-Feb		13-Jun	7-Feb
	12-Jun		17-Jul	17-Jul
Misc Reserve <sup>(6)</sup>				
al Restructuring Related Disbursements				
uptcy Professional Accruals (7)	\$ (900,000)	\$		\$ (900,000)
r Counsel (Fox Rothschild)	(800,000)		<u> </u>	(800,000)
cial Advisor (Province)	(300,000)		2=	(300,000)
der Counsel	(150,000)		<b>.</b>	(150,000)
der Counsel	(250,000)		121 121	(250,000)
oticing Reserves (Stretto)				The state of the s
nt Director	(20,000)		9 <del>4</del> 8	(20,000)
ancial Advisor	(325,000)		-	(325,000)
unsel	 (425,000)			(425,000)
Operating / Professional Fee Reserve	\$ (3,170,000)	\$		\$ (3,170,000)

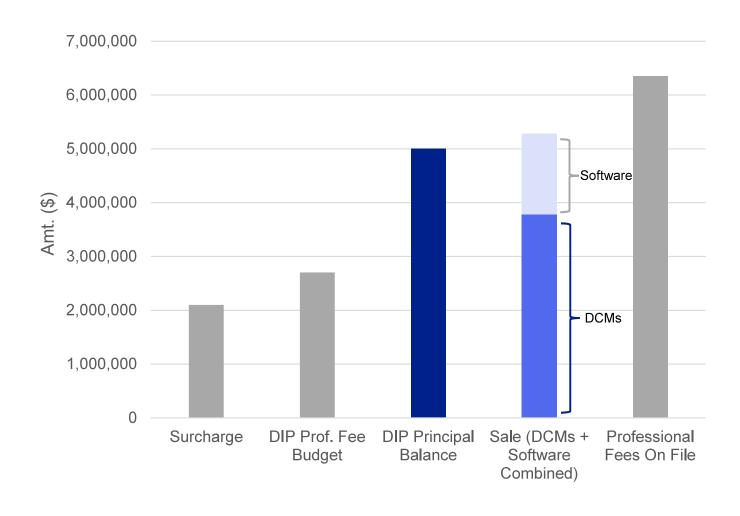
See Final DIP Order [Docket No. 315], Exhibit A.

# **Governing Ninth Circuit Law**

"The benefit test establishes a ceiling on the recovery of the trustee. . . . The actual surcharge is further limited to those expenses that were *reasonable and necessary* to obtain this benefit. To satisfy the benefit test, the debtor must establish in *quantifiable terms* that it expended funds *directly to protect and to preserve the collateral.*"

Am. Sav. and Loan Ass'n v. Grill, 92 B.R. 437, 445 (Bankr. C.D. Cal. 1988) (emphasis added) (citations omitted).

# What Benefit? The DCM Sale Did Not Clear the DIP



# The Debtor's Witness Acted as a Rubber Stamp

- Q. And so as a result of your investigation and analysis, did you conclude that the professional fees were related to the sale of the assets?
- A. The professional fees that I reviewed and that were included in the surcharge, yes.
- Q. And as a result of your review, did you determine that any professional fees were unnecessary?
- A. No.
- Q. And as a result of your review, did you find that any of the professional fees were unreasonable?
- A. No.

Transcript of Deposition of Tanner James (Oct. 9, 2023), at 15:12-24.

# Fees Well in Excess of Court-Ordered Cap Are Not Reasonable

Through August 2023, Fox Rothschild had incurred nearly \$700,000 of fees in excess of Court-ordered cap of \$450,000:

	First Monthly Fee	Second Monthly Fee	Third Monthly Fee	Fourth Monthly Fee	Fifth Monthly Fee	
Category	Statement	Statement	Statement	Statement	Statement	Total
References to "First Day" Matters	\$30,815.50	\$2,204.00				\$33,019.50
Asset Disposition (Asset Analysis & Recovery)	\$11,303.50	\$4,002.00	\$3,204.00	\$22,020.00	\$34,844.00	\$75,373.50
Assumption/Rejection of Executory Contracts & Unexpired Leases	\$128,373.00	\$28,821.00	\$58,658.50	\$51,326.50	\$44,800.50	\$311,979.50
Use, Sale, or Lease of Property	\$41,871.50	\$50,560.50	\$126,674.50	\$187,750.50	\$58,868.50	\$465,725.50
Financing/Cash Collateral	\$101,938.50	\$3,297.50	\$16,770.00	\$5,989.00	\$8,701.50	\$136,696.50
341 Meeting	\$2,919.50					\$2,919.50
Total	\$317,221.50	\$88,885.00	\$205,307.00	\$267,086.00	\$147,214.50	\$1,025,714.00

Enigma 99, 113, 119, 124, 186

# **Necessary? Invoices Contain Countless Unexplained Time Entries**

Case 23-10423-m	nkn Doc 984 Entered 07/31/23 19:49	:02 Page 1 of 54	05/23/2023	Call w UCC professionals (.8)
THIRD MONTHLY FEE STATEMENT OF SEWARD & KISSEL LLP FOR ALLOWANCE AND PAYMENT OF COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR			05/24/2023	list (.2); prep for (.1) and call with Province (.8); follow up call with Province and Debtor counsel (1.0).
THE PERIOD OF MAY 1, 2023, THROUGH MAY 31, 2023		05/25/2023	call with Debtor advisors (.7);	
05/01/23	CHLUM	SA	PREPARE CHART OF DEADLINES AND FORWARD TO A. NOLL	FOX ROTHSCHILD LLP'S MONTHLY FEE STATEMENT OF SERVICES  PENDERED AND EXPENSES
05/09/23	SMITH	SA	CONFERENCE WITH COLLEAGUE RE: CONTENTS OF CORPORATE CONSENTS	RENDERED AND EXPENSES INCURRED FOR THE PERIOD FROM MAY 1, 2023 THROUGH MAY 31, 2023
05/11/23	MCCARTY	SA	REVIEW AND RESPOND TO EMAIL REGARDING WORKER'S COMP. RECORDS.	
05/12/23	AXELROD	SA	REVIEW ORDER GRANTING SOLICITATION AND COORDINATE WITH STRETTO RE SERVICE	Enigma 119, 128

# The Debtor's "Smoking Gun"

From: Kissner, Andrew < AKissner@mofo.com>

**Sent:** Tuesday, May 2, 2023 3:02 PM

To: Tanner James <tjames@provincefirm.com>; Zach Marcus <zmarcus@Enigma-securities.io>; Spencer Stires

<sstires@provincefirm.com>

Cc: Barry Finkelstein <br/>
<br/>
Spinkelstein@Enigma-securities.io>; Axelrod, Brett <BAxelrod@foxrothschild.com>

Subject: RE: Coin cloud

#### **EXTERNAL EMAIL**

#### Tanner,

Unfortunately, the lack of clarity around the go-forward licensing situation appears to be a deal-killer for parties seeking to purchase abandoned collateral. Put another way, nobody wants to take on the risk of operating the kiosks if the plug might be pulled on the software in two months. Copying Brett in case she has any other ideas, but is there any appetite to granting a postpetition license? Otherwise, I'm not sure I see how these machines end up anywhere but a landfill.

-Andrew

#### **Andrew Kissner**

Of Counsel

akissner@mofo.com

T: +1 (212) 336-4117 M: +1 (646) 510-5704

I'IORRISON FOERSTER

mofo.com | bio | vcard

Debtor 45

# The Standing Motion

# Debtor Stipulates to Validity / Scope of Liens + Collateral

### Case 23-10423-mkn Doc 315 Entered 03/20/23 09:24:15 Page 7 of 39

- (ii) <u>Prepetition Liens and Collateral</u>. The Enigma Secured Claims are secured by first priority liens on and security interests in the "Collateral" under and as defined in the Enigma Loan (such liens and security interests, collectively, the "<u>Enigma Liens</u>", and the collateral securing the Enigma Liens, the "<u>Enigma Collateral</u>").
- (iii) <u>Validity, Perfection and Priority of Enigma Liens and Enigma Secured</u>

  <u>Claims.</u> As of the Petition Date, (A) the Enigma Liens constitute valid, binding, enforceable and perfected liens in, and with priority over any and all other liens in, the Enigma Collateral

# Committee "Forgot" About its Largest Member's Lien

From: "Tucker, Michael" < Michael. Tucker@FTIConsulting.com>

Tue, 9 May 2023 12:51:17 -0400 (EDT) Sent:

"Daniel Moses" <dmoses@provincefirm.com> To: Cc: "Paul Huygens (phuygens@provincefirm.com)"

<phuygens@provincefirm.com>; "Tanner James"

<tjames@provincefirm.com>; "Axelrod, Brett (BAxelrod@foxrothschild.com)"

<baxelrod@foxrothschild.com>; "Gayda, Robert J." <gayda@sewkis.com>; "LoTempio, Catherine" < lotempio@sewkis.com>; "Matott, Andrew" < matott@sewkis.com>; "Eisler,

Marshall" <Marshall.Eisler@fticonsulting.com>; "Halevy, Rich"

<Rich.Halevy@fticonsulting.com>

"We made an assumption that . . . 500 of [Enigma's machines] will have lien issues

sold at a value of 1,000 per ATM. We have

available cash proceeds. We have also assumed a

proceeds would be Estate cash under a lien challenge.

where the related sale proceeds would be Estate cash under a lien challenge."

.05.09 xlsx

coin stalking horse bid for discussion and planning as urposes, we have assumed 3,500 ATM's are being

d certain expenses that likely exist and would be paid from vsiness value (both ATM's and all other assets) is essentially business value is allocated based on the total value of the the purchase price less the cash that is being purchased. ATM's using the per unit basis with the balance of value being ttributed to all other assets. We made an assumption that 3,000 ATMs being sold relate to Enigma's collateral and 500 of those will have lien issues where the related sale

Enigma 12

Αt

# The *Most* Estate Can Benefit from Challenge is \$260,000

Case 23-10423-mkn Doc 1375 Entered 10/13/23 16:24:17 Page 4 of 10

#### III. TERMS OF SETTLEMENT

- 15. Pursuant to Local Rule 9019(c), the Parties provide the following summary essential terms of the Settlement Agreement:<sup>2</sup>
  - a. Genesis agrees to release its liens on the Enigma Collatery to the Lien Challenge Claims in exchange for the greater of (a) \$33,00 (b) 33% of the proceeds (i) obtained from any consensual resolution or settlement of the Lien Challenge Claims with Enigma or (ii) if the Lien Challenge Claims are successful, arising from any sale, monetization, or liquidation of the Enigma Kiosk Collateral subject to the successful Lien Challenge Claims.

"\$390,000 in Lien Challenge Claims are colorable"

"Genesis agrees to release its liens . . . in exchange for . . . 33% of the proceeds . . . If the Lien Challenge Claims are successful"

Case 23-10423-mkn Doc 1360 Entered 10/10/23 20:40:57 Page 25 of 30

A cost-benefit analysis also supports granting derivative standing to the Committee. As set forth in the Standing Motion, based on the Committee's analysis to date, at least \$390,000 in Lien Challenge Claims are colorable, and \$415,000 in Adequate Protection Payments already made are subject to recharacterization. What is more, the Committee has negotiated a settlement with Genesis

 $(1 - 0.33) \times $390,000 = $261,300$ 

# **But It Would Cost the Estate \$240,000 to Get There**

Firm	Blended Rate	Blended Rate	Hours Billed		
	(Incl. Paralegals)	(Excl. Paralegals)	Through 6/30/23		
Seward & Kissel	\$992.20	\$1,006.37	1,054.7		
McDonald Carano	\$510.73	\$642.72	88.8		

Scenario	Cost to Litigate	Cost to Litigate
	(Incl. Paralegal	(Excl. Paralegal
	Rates)	Rates)
Only Nevada counsel	\$127,682.50	\$160,680.00
50:50 split between S&K /	\$187,866.25	\$206,136.25
McDonald		
Proportional split based on hours	\$238,704.67	\$244,534.06
billed in case to date		

Enigma 108, 109, 116, 117, 128-131

# Debtor Was Ordered Not to Challenge Enigma Liens / Claims

Case 23-10423-mkn Doc 315 Entered 03/20/23 09:24:15 Page 8 o

excluding Cash (other than the Permitted Priority Liens) and the Debtor or the DIP I ender shall not raise or join any challenge or defense, including, without limitation, respectively, avoidance, reductions, recharacterization, subordination (whether equitable, contractual or otherwise), claims, counterclaims, cross-claims, offsets, recoupments, objections, defenses or any other challenges under the Bankruptcy Code or any applicable law or regulation by any

Code or any applicable law or regulation; (E) the Debtor or the DIP Lender shall not raise or join in any assertion of any claims, objections, challenges, causes of action and/or choses in action, including, without limitation, avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against Enigma, or any of their respective affiliates, agents, attorneys, advisors, professionals,

except to the extent that Enigma seeks to assert a perfected security interest in Cash; and (F) the Debtor and the DIP Lender have waived, discharged and released any right to challenge any of the Enigma Secured Claims, the priority of any of the Enigma Secured Claims and the validity, extent and priority of the Enigma Liens except to the extent that Enigma seeks to

"[T]he Debtor . . . shall not raise or join any challenge . . . ."

"[T]he Debtor . . . shall not raise or join in any . . . challenges . . . ."

"[T]he Debtor . . . [has] waived, discharged and released any right to challenge . . . ."

# **But the Debtor Did it Anyway**

**From:** "Axelrod, Brett" < BAxelrod@foxrothschild.com>

**Sent:** Wed, 12 Apr 2023 14:46:10 -0400 (EDT)

To: "Matott, Andrew" <matott@sewkis.com>; "LoTempio, Catherine" <lotempio@sewkis.com>

Subject: [EXTERNAL] Fwd: CC: Adequacy of Collateral Description

From: Koffroth, Nicholas A. < NKoffroth@foxrothschild.com>

Sent: Friday, April 7, 2023 12:40 PM

To: McPherson, Jeanette E. < JMcPherson@foxrothschild.com>

Cc: Axelrod, Brett <BAxelrod@foxrothschild.com>; Zarei Henzaki, Niloofar <NHenzaki@foxrothschild.com>

Subject: CC: Adequacy of Collateral Description

#### Jeanette:

Niloofar researched the issues and found some helpful information. Based on our initial research, the software ID and location ID are insufficient to "reasonably identify the collateral." For the sake of clarity, the research has focused on the UCC as adopted by the NRS and has not reviewed the UCC applicable to other jurisdictions, although that can be expanded if requested.

Enigma 41

# The Administrative Expense Claim



# **Debtor Conservatively Valued Enigma DCMs at \$11mm+**

Case 23-10423-mkn Doc 37 Entered 02/08/23 19:57:28 Page 5 of

Adequate Protection Analysis
Cash Cloud Inc

Machine Useful Life:
DIP Loan Obligation: \$

1,825 Di 5,000,0

Coin Cloud - Collateral Analysis:

Note: Assumes the useful life for all machines is 5-years from the first date of deployment.

Note: Assumes the value of all machines marked "Decommissioned" or "Stolen" is zero.

Note: The value of each machine is determined by dividing the unit acquisition price by its estimated useful life in days, multiply its estimated remaining useful life in days.

<u>Note</u>: The Debtor is in the process of reconciling certain invoices with its books and records, which indicate a higher book value for its machines than set forth in this analysis.

Note: This analysis is subject to further diligence by the Debtor as it reconciles its books and records.

Enigma First Lien	Acqu	isition Price	Avg. Machines Age (Days)	Total Units	Est	t. Gross Value	Es	t. Net Value
Operational Units								
Slabb 1.0	\$	7,387	1,501	4	\$	29,549	\$	5,246
Lynna 1.0		7,387	1,825	1		7,387		1.
APSM 1.1		5,550	1,226	26		144,300		47,362
ColeKepro 5.0		8,753	525	125		1,094,125		779,324
ColeKepro 3.0		5,729	845	2,995		17,158,355		9,210,951
ColeKepro 1.0		5,550	995	194		1,076,700		489,677
ColeKepro 2.0		5,550	856	201		1,115,550		592,512
ColeKepro 4.0		8,529	591	29		247,341		167,243
Net Book Value - Enigma First Lier	1		20400	3,575	\$	20,873,308	\$	11,292,316
(-) Enigma Security Interest								(7,573,699)
Excess Collateral - Enigma First Lie	n						\$	3,718,617
					Enic	gma Coverage:		0.49x

"[B]ooks and records . . . Indicate a higher book value for [Enigma's] machines than set forth in this analysis."

\$11.3 million

# **Enigma Has Allowed Administrative Expense Claims Under** the Final DIP Order

postpetition interest calculated at 12.5% of the outstanding amount of the Enigma Secured Claims, consisting of (i) monthly cash payments on the last day of each month equivalent to interest calculated at 6.25% and (ii) an allowed administrative expense claim accruing at 6.25%; provided, that nothing herein shall be deemed to be an admission by the Debtor that Enigma is over-secured, and the Debtor and Enigma reserve all rights and defenses with respect thereto; (ii) the Debtor shall maintain any insurance policies that were applicable to the Enigma

See Final DIP Order [Docket No. 315], ¶ 10(g).

### I'IORRISON FOERSTER





